

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 97-0400**

**Sales and Use Tax**

**Calendar Years 1994, 1995, 1996**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE(S)**

**I. Gross Retail Tax – Taxability of Telephone Charges**

**Authority:** IC 6-2.5-4-4; IC 6-2.5-4-6; 45 IAC 2.2-4-8(e)

Taxpayer protests the assessment of sales tax upon unreported telephone sales.

**II. Gross Retail Tax – Sales Taxes Paid Upon Utility Purchases**

**Authority:** IC 6-2.5-4-5; 45 IAC 2.2-4-13; 45 IAC 15-5-2

Taxpayer protests the fact that the audit did not find that sales tax was overpaid on utilities.

**III. Tax Administration – Penalty**

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

**STATEMENT OF FACTS**

The taxpayer owns and operates a full service motel operation that provides rooms, food and beverages to the public. One adjustment that was made in the audit was the assessment of sales tax upon charges to guests for local telephone calls (charged at a rate of \$0.40 per call). Furthermore, the audit assessed the taxpayer sales tax upon the mark-up (@20%) on long distance calls charged to guests.

**I. Gross Retail Tax – Taxability Of Telephone Charges**

**DISCUSSION**

At issue is whether or not the taxpayer is required to (1) collect sales tax upon local calls made by guests, and (2) collect sales tax upon the mark-up charge on long distance calls made by guests.

As stated by Administrative Rule 45 IAC 2.2-4-8(e), “The tax is imposed on the gross receipts from ‘furnishing’ an accommodation. The gross receipts subject to tax include the amount which represents consideration for the rendition of those services which are essential to the furnishing of the accommodation, and those services which are regularly provided in furnishing the accommodation. Such amounts are subject to tax even when they are separately itemized on the statement or invoice.”

Charges to guests for local telephone calls made from their rooms fit within the parameters of the preceding administrative citation, and are thus considered to be subject to the collection of sales tax.

The taxpayer pays its service provider the base charge of any long distance telephone call that guests make without the use of a personal calling card. The taxpayer then bills their guests for this base charge, plus a 20% mark-up.

When the taxpayer bills the guest for the base long distance charge, they are billing for reimbursement of a charge that they (the taxpayer) paid to their long distance service provider. Any additional charge (such as mark-up) added by the taxpayer to a bill for reimbursement of long distance toll charges is considered to be a service charge that is in fact essential to and regularly provided in the furnishing of the accommodation. As such, the mark-up charge on long distance telephone calls is subject to the collection of sales tax.

**FINDING**

The taxpayer’s protest is denied.

**II. Gross Retail Tax – Sales Tax Paid Upon Utility Purchases**

**DISCUSSION**

The taxpayer is protesting the fact that the Department did not refund any sales taxes, in the audit, that the taxpayer paid upon various utilities. The fact is that the Department did not address the issue of utility purchases in said audit. In addition, this issue was not brought to the auditor’s attention by the taxpayer at the time of the audit. In light of the preceding, this issue cannot be addressed in this protest.

### **FINDING**

Only the assessment of taxes is subject to protest under Indiana Code 6-8.1-5-1. The taxpayer is advised to file a claim for refund on this particular issue.

### **III. Tax Administration – Penalty**

### **DISCUSSION**

The taxpayer protests the penalty that was assessed on the audit assessment, as they feel that a good faith effort has been made on their part to accurately remit sales taxes to the Indiana Department of Revenue.

As stated by Administrative Rule 45 IAC 15-11-2(b), "'Negligence' on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer".

### **FINDING**

The taxpayer's protest is sustained. The 10% negligence penalty that was originally assessed will be abated in full.